

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Misc. Petition No. 298 (S/B)/2002

Smt. Puspa Arya .

.....Petitioner.

Vs

State of Uttaranchal and others

.....respondents.

Date of decision: 24, August 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (yes)
- Whether reporters be allowed to see the judgment? (yes)

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

Writ Petition No. 298(S/B)/2002

Smt. Puspa Arya	Vs.	 Petitioner
State of Uttaranchal & Others		...Respondents.

Sri Sharad Sharma, Advocate for petitioner
Standing Counsel for the respondents

Hon'ble P.C. Pant – J.

1. This Writ Petition has been moved under Article 226 of Constitution of India seeking mandamus directing the respondent to fix seniority of the petitioner from the date of her initial appointment; and also for writ in the nature of certiorari quashing the order dated 11.04.2002 passed by the District Development Officer, Almora.

2. Brief facts of the case as stated in the writ petition are that the petitioner is permanent resident of District Almora and after going through the selection process, she was appointed as Junior Clerk on 02.01.1976 in the District Almora. after her marriage, since petitioner's husband was posted as Government Cooperative Supervisor in District Pithoragarh, she got herself transferred in said District. Consequently she joined her duties in District Pithoragarh in 1981. Meanwhile, U.P. Agricultural Production and Rural Development Rules 1980 were framed which came into force with effect from 20.08.1982. On 31.08.1986, the Commissioner, Rural Development issued a circular letter No.4101 dated 21.10.1986 whereby new staffing pattern brought into force and District cadres were created for

the clerks for the first time. It is alleged that the respondents wrongly interpreted the circular letter and down graded seniority at Sl.No.44 of the petitioner from the date of joining at Pithoragarh i.e. 03.08.1981. The fixation of seniority was wrong as her substantive appointment was not taken into the account. On adoption at new staffing pattern, the respondents permitted the other staff to come back to Almora but no such option was given to the petitioner. Ultimately the petitioner sought her transfer back to Almora through the representation. Consequently, in 1994 she joined her duties at Almora on 25.01.1994, but to her utter surprise now in the seniority list prepared at Almora on 19.08.1997, the petitioner was further down graded in the seniority list treating her joining in the District on 25.01.1994. The fixation of seniority as such is highly arbitrary and illegal. The petitioner's appeal/representation against seniority list dated 19.08.1997 was rejected vide impugned order dated 11.04.2002 (copy annexure 15) hence the writ petition.

3. The respondent No.1-5, filed their Counter Affidavit in which it is admitted that the petitioner was appointed as Lower Divisional Clerk by District Planning Officer, Almora in 19.01.1976. It is further admitted that vide order dated 24.07.1981, the Deputy Development Commissioner, Kumaon Mandal transferred the petitioner from District Almora to District Pithoragarh. It is also admitted that the petitioner was promoted as Senior Divisional Clerk on

26.03.1984. In the Counter Affidavit, it is also admitted that the District Cadres were created after initial appointment of petitioner. The respondent have not disputed this fact that she was transferred back to Almora vide order dated 08.06.1993 of the Deputy Development Commissioner, Kumaon and joined her duties on 25.01.1994 at Almora. the plea raised in the Counter affidavit, justifying for the fixation of seniority, is that petitioner got herself transferred on her request and she could not get benefit of services of one district in the another district.

4. I heard learned counsel for the parties and perused the affidavits and annexures annexed thereto.

5. The short question for the consideration before this court is whether the petitioner is wrongly denied her due seniority and is the impugned order rejecting her appeal/representation vide order dated 11.04.2002 passed by the District Development Officer, Almora is illegal.

6. Before further discussion in the matter, it is pertinent to mention the relevant rule of seniority applicable to the case of the petitioner. Rule 21 of U.P. Agricultural Production and Rural Development Rules 1980 is produced below:-

*“21.**seniority**- (1)Except as hereinafter provided, the seniority of persons in any category of post shall be determined from the date of the order of substantive appointment and if two or more persons are appointed together, by the order in which their names are arranged in the appointment order:*

Provided that if the appointment order specified a particular back date with effect from which a person is substantively appointed that date will be deemed to be in the date of order of substantive appointment and in other cases, it will mean the date of issue of the order.

Provided further that, if more than one order of appointment are issued in respect of any one selection the seniority shall be as mentioned in the combined order of appointment issued under rule (2) of rule 18.

(2) The seniority inter se of persons appointed directly on the result of any one selection shall be the same as determined by Selection Committee.

Provided that a candidate recruited directly may lose his seniority if he fails to join without valid reasons when vacancy is offered to him. The decision of the appointing authority as to the validity of reason shall be final.

(3) The seniority inter se of persons appointed by promotion shall be the same as it was in the cadre from which they were promoted."

7. The analogous provisions applicable to the U.P. Government Servants is contained in U.P. Government Servants Seniority Rules, 1991, [applicable to the Uttaranchal] Rule 8(1) and 8(2) of said rules is quoted below:-

"8.Seniority where appointments by promotion and direct recruitment- (1) Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the

provisions of the following sub-rules, be determined from the date of the order of their substantive appointments, and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order:

Provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases, it will mean the date of issuance of the order:

Provided further that a candidate recruited directly may lose his seniority if he fails to join without valid reasons, when vacancy is offered to him the decision of the appointing authority as to the validity of reasons, shall be final.

(2) The seniority inter se of persons appointed on the result or any one selection,-

(a) through direct recruitment, shall be the same as it is shown in the merit list prepared by the Commission or by the Committee, as the case may be;

(b) by promotion, shall be as determined in accordance with the principles laid down in Rule 6 or Rule 7, as the case may be, according as the promotion are to be made from a single feeding cadre or several feeding cadres.

(3) Where appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotes vis-à-vis direct recruits shall be determined in a cyclic order (the first

being a promotes) so far as may be, in accordance with the quota prescribed for the two sources.”

8. The above Rules 21 & 8 make it clear that the seniority of the petitioner is to be counted from the date of her substantive appointment. In the counter Affidavit, in its para 3, it is admitted that the petitioner was appointed s Lower Division Clerk at Almora on 02.01.1976. It is also clear that on said date the above rules were not applicable as present staffing pattern came into force with effect from 20.08.1982. That being so, it is injustice to the petitioner depriving of her services in the District Almora prior to 1981 and that of the from 1981 to 93 at Pithoragarh. It is highly arbitrary and unlawful on the part of the District Development Officer, Almora to ignore her prior services for seniority at Almora and Pithoragarh. Merely for the reason that she was transferred at her own request to Pithoragarh in 1981, before 1981 Rules came into force, she can not be deprived of her due seniority.

9. Learned Standing Counsel could not show me either any rule or any condition in the transfer order where the petitioner is to forgo her seniority on her transfer. It is settled principle of law that a Government servant gets seniority from the date of ones substantive appointment. The respondents ignored the fact that the petitioner was compelled to come back to Almora as she was deprived of her seniority at Pithoragarh due to her transfer. It is nothing but harassment of the official that when she came back to

her parent district, she was denied her seniority even there. Annexure 14 to the writ petition which is copy of nothings relating to the seniority, shows that the Chief Development Officer had also approved on 14.01.2002 that the petitioner be given her original seniority. But the District Development Officer appears to have arbitrarily denied her due seniority by the impugned order dated 11.04.2002 which is illegal and liable to be quashed as same is hit at Article 14 of Constitution of India.

10. Accordingly, the impugned order dated 11.04.2002 passed by the District Development Officer, Almora and seniority list dated August, 1997 to the extent showing down graded seniority of the petitioner is quashed and it is directed that petitioner to be placed in said seniority list at Sl.No.13 after the name of Khayali Ram Joshi as approved by Chief Development Officer on 14.01.2002. The Writ petition is allowed. No order as to costs.

(P.C. Pant-J)

Dated: August 24, 2004
J.K.Jain